Filed 1/23/19 Stark v. Ortiz CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

WAYNE STARK, et al., Plaintiffs and Appellants, v. NORMA ORTIZ, Defendant and Respondent.	A153324 (Humboldt County Super. Ct. No. DR110802)

Wayne, Katherine, Matthew, and Nicole Stark (collectively plaintiffs) and Norma Ortiz own adjoining parcels of agricultural land in Humboldt County. Ortiz has an exclusive easement over a portion of plaintiffs' property. Plaintiffs filed a complaint against Ortiz to, among other things, void the easement. The trial court entered judgment for Ortiz. Plaintiffs appeal. Their principal contentions are the exclusive easement amounts to an ownership conveyance, and that it violates the Subdivision Map Act (Gov. Code, § 66410 et seq., Map Act).[1] We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Robert and Cindi Kehoe (collectively, Kehoe) owned two adjoining 40-acre parcels of land in Humboldt County, Assessor's Parcel Nos. 221-141-014 (014 parcel) and 221-141-020 (020 parcel). The 014 parcel is mountainous. Kehoe lived in a house on the 014 parcel, but used 2.4 acres of the 020 parcel—a relatively flat area—"for

[1] Undesignated statutory references are to the Government Code. We refer to certain plaintiffs by their first names for clarity.

garden purposes and ingress/egress" to the 014 parcel. In February 2004, Ortiz's sister purchased the 014 parcel. In connection with the purchase, Ortiz's sister and Kehoe entered into an easement agreement for the 2.4-acre area on the 020 parcel.

The easement agreement provides the easement is "exclusive," and "for ingress and egress over and across the servitude tenement and for the purpose of maintaining, cultivating and improving the garden area." The "easement is located centrally on the North/South borderline between the respective properties" and "generally runs along with South line of Humboldt County Road B for a distance of 780 feet between the servitude tenement and the dominant tenement."[2] The agreement binds the parties' successors in interest and entitles the prevailing party in "any legal action or proceeding arising out of or relating to" the agreement to receive "reasonable attorney's fees, costs and expenses incurred in the action or proceeding." The grant deed on the 014 parcel and the easement agreement were recorded in February 2004.

Plaintiffs purchased the 020 parcel in November 2004. Ortiz acquired the 014 parcel in 2007. She accessed her property using the road on the easement area. She also used the easement area for gardening purposes: she built a greenhouse, installed a well and irrigation, and constructed fences around the garden area. In 2011, plaintiffs filed a complaint against Ortiz, alleging claims for declaratory relief, quiet title, ejectment, and trespass. As relevant here, plaintiffs alleged Ortiz "improperly occupied an area beyond [the area] described in the Easement Agreement," and that she "erected structures and engaged in activities not authorized by the Easement Agreement." Plaintiffs also alleged the "grant of an exclusive easement" was "illegal" and "void" under the Map Act. Plaintiffs sought a declaration the easement agreement was illegal and void, and urged the court to quiet title in their favor.

[2] The easement agreement attaches three exhibits: exhibit A, a map of the servitude tenement; exhibit B, a map of the dominant tenement; and exhibit C, a map of the easement. The agreement also states the "parties shall cause to be filed a survey of the exact location" but neither Kehoe nor Ortiz's sister commissioned a survey.

Overview of Trial Testimony

At a court trial, Wayne testified that before plaintiffs purchased the 020 parcel, he knew Ortiz had an exclusive easement, which meant she "was the only one [who] could use" the easement area. Wayne saw a copy of the easement agreement before plaintiffs purchased the property. The title report for the 020 parcel referenced the recorded easement agreement. In 2009, Ortiz installed fences and a locked gate around the garden area, which prevented plaintiffs from accessing portions of their property. Matthew testified Ortiz told plaintiffs they "can't go in" the easement area—that it "was . . . for her to use." According to Matthew, "she's basically claimed ownership of it."

A supervising planner at the Humboldt County Planning and Building Department (planning department), testified the minimum parcel size for agricultural land in the county is 40 acres. When a property owner "wishes to utilize a portion" of an adjoining piece of property, a common approach is "a lot line adjustment." To maintain the minimum parcel size, however, a lot line adjustment "would require an equal area exchange of land." An exclusive easement does not "move the property line" and does not implicate the Map Act. According to the planner, Ortiz's exclusive easement over the 020 parcel "does not change the size" of that parcel—it simply diminishes the area plaintiffs can use. The planning department has no opinion on the validity of the exclusive easement.

A licensed surveyor prepared a survey of the 014 and 020 parcels in 2012. He described the location of the easement area. Ortiz testified she was involved in the negotiation and purchase of the 014 parcel. Ortiz did not want to purchase the 014 parcel without the garden area, so she and Kehoe discussed a lot line adjustment, which they thought would give Ortiz the rights to that area. After speaking with the planning department, Ortiz and Kehoe decided an exclusive easement was the most efficient and economical solution. The easement agreement would be "very restrictive" and would "[n]ot [convey] ownership." Kehoe prepared the easement agreement. Ortiz's sister purchased the 014 parcel for $200,000 and paid an additional $20,000 for the exclusive easement. Ortiz's sister gave her the property in 2007. Ortiz accesses her property using

a road in the easement area. She maintains a large garden on the easement area. Some of the easement area is fenced.

Statement of Decision and Judgment

The court determined Ortiz's property—the 014 parcel—and plaintiffs' property—the 020 parcel—were both 40 acres, and that the exclusive easement did not increase or decrease the size of either parcel. It explained: "[b]oth the Stark Property and the Ortiz Property are still both 40 acres regardless of the . . . Easement." The court also concluded plaintiffs were responsible for paying taxes on the easement area. Next, the court determined the "size of the Easement . . . is 2.4 (+/-) acres . . . . The location of the Easement is described in [the easement agreement]. Generally, the length of the Easement runs along the south edge Humboldt County Road B a distance of 780 feet beginning at Ortiz's gate and continuing along said roadway until the Road B intersects the common boundary line on the Ortiz Property and the Stark Property. The remainder of the Easement follows the exiting fence that was testified to by Ortiz and . . . [the surveyor] . . . . The Easement Agreement . . . primarily defines the Easement Area." Finally, the court concluded the easement was "exclusive" based on the express language of the easement agreement; that Ortiz was entitled to "sole physical possession" of the easement area; and that she could fence the area and deny plaintiffs "any use of and access onto" the easement area.

The court entered judgment for Ortiz, concluding (1) title in the 020 parcel "pertaining solely to the exclusive easement as described in the Easement Agreement . . . and depicted on the recorded Record of Survey . . . is quieted in favor of . . . Ortiz;" (2) Ortiz's "use of the exclusive easement is . . . exclusive as to [Ortiz] and [plaintiffs] shall have no right to use or occupy this area[;]" (3) Ortiz's "use of the exclusive easement is solely for the purpose of ingress and egress and for gardening and garden-related purposes;" and (4) the "exclusive easement, per the terms of the Easement Agreement . . . is assignable only by . . . Ortiz and the Easement Agreement . . . is binding on and shall inure to the benefit of heirs, executors, administrators, successors and assigns" of the owners of the 014 and 020 parcels.

DISCUSSION

"Generally, easements are distinguished from estates in land such as ownership in fee, tenancy in common, joint tenancy, and leaseholds, which are forms of possession of land. [Citation.] ' "An easement involves primarily the privilege of doing a certain act on, or to the detriment of, another's property." [Citation.] An easement gives a nonpossessory and restricted right to a specific use or activity upon another's property, which right must be *less* than the right of ownership. [Citation.]' [Citations.] Thus, '[t]he owner of the easement is not the owner of the property, but merely the possessor of a "right to use someone's land for a specified purpose . . . ." ' " (*Blackmore v. Powell* (2007) 150 Cal.App.4th 1593, 1598 (*Blackmore*).) "An exclusive easement is the right of the holder of the easement to exclude everyone, including the servient owner, from use of the land within the easement boundaries." (*Rye v. Tahoe Truckee Sierra Disposal Co., Inc.* (2013) 222 Cal.App.4th 84, 93.)

"[A]n express exclusive easement may be created by an instrument clearly stating the intention that the easement be exclusive." Exclusive easements "have been held to be valid and enforceable under California law." (*Gray v. McCormick* (2008) 167 Cal.App.4th 1019, 1029 (*Gray*); *Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 769, fn. 11.) "We review the trial court's findings for the existence of substantial evidence. [Citation.] To the extent that material facts are not in dispute, the rulings regarding the grant of the easement and the scope of the Map Act constitute determinations of law that we review de novo." (*Blackmore, supra,* 150 Cal.App.4th at p. 1598, fn. 2.)

Plaintiffs contend the exclusive easement amounts to an ownership conveyance because they cannot use or possess the easement area. Two cases have rejected a similar argument. In *Blackmore*, a grant deed awarded the plaintiff an "easement . . . for 'parking and garage purposes' over a defined area" on an adjoining parcel of property. (*Blackmore, supra,* 150 Cal.App.4th at p. 1597.) The trial court determined the grant deed, by its express terms, authorized the plaintiff to build a garage and entitled him to exclusive use of that garage. (*Ibid.*) *Blackmore* affirmed, concluding the exclusive

easement did "not rise to fee ownership" because the rights accorded to the plaintiff were "circumscribed" and because the "award of exclusive control over the garage—which will occupy only a small portion of the easement—[was] intended solely to protect these restricted rights." (*Id.* at p. 1600.)

Gray reached a similar result. There, the plaintiffs held an exclusive easement over property owned by the McCormicks; the easement was "for the exclusive use of the owners of the dominant tenement." (*Gray, supra,* 167 Cal.App.4th at p. 1021.) The appellate court held the exclusive easement—which precluded the McCormicks from using the easement area—was valid. In reaching this conclusion, the *Gray* court determined the exclusive easement did not grant the plaintiffs "fee ownership over the easement area." (*Id.* at pp. 1029, 1032.) *Gray* explained the plaintiffs had "not acquired fee title to the easement area; rather, their use of the easement area is limited to access, ingress and egress purposes, not all conceivable uses of the property. . . . [T]he exclusive easement is an express easement of record and was known to the McCormicks at the time they purchased their property." (*Id.* at p. 1031.) The court held exclusive use of the property of another was not "tantamount to the taking of fee title by a neighboring property owner." (*Id.* at p. 1032.)

As in *Blackmore* and *Gray*, the exclusive easement does not amount to a conveyance of ownership. The easement agreement authorizes Ortiz to use the 2.4-acre area for a circumscribed purpose: ingress and egress and gardening-related activities. (*Gray, supra,* 167 Cal.App.4th at pp. 1025–1026; *Blackmore, supra,* 150 Cal.App.4th at p. 1597; see also *Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041, 1048 [exclusive, but restricted, use of property "is not the same as a fee interest"].) The easement area is a defined—and relatively small—portion of the 020 parcel. (*Blackmore,* at p. 1600.) Ortiz's right to exclude plaintiffs from the easement area does not rise to fee ownership. (*Id.* at p. 1601.)[3]

[3] Plaintiffs discuss numerous cases, including *Raab v. Casper* (1975) 51 Cal.App.3d 866. These cases are inapposite because they concern prescriptive easements, which raise different concerns than exclusive easements. (See *Hansen v.*

Next, plaintiffs contend the exclusive easement violates the Map Act, " ' "the primary regulatory control" governing the subdivision of real property in California.' " The Map Act "consigns the regulation of the design and improvement of subdivisions to local agencies, and subjects subdividers to applicable local land use ordinances and plans. [Citation.]. . . . To comply with the act, a person seeking to subdivide property 'must secure local approval and record an appropriate map.' " (*Blackmore, supra,* 150 Cal.App.4th at pp. 1602–1603, fns. omitted.) "Under the Map Act, the term 'subdivision' means 'the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future.' [Citation.] The Act further defines the term 'subdivider' to refer to a party 'who proposes to divide, divides or causes to be divided real property into a subdivision for himself or for others.' " (*Id.* at pp. 1603–1604.)

Ortiz's exclusive easement is not a "subdivision" under the Map Act. The Map Act's "provisions, by their plain language, encompass the division of real property into units that constitute possessory interests in land, including leaseholds, but not the creation of the private easement at issue here." (*Blackmore, supra,* 150 Cal.App.4th at p. 1604.) At trial, the planning department employee testified Ortiz's exclusive easement "does not change the size" or "move the property line" for either parcel. He also testified the exclusive easement does not implicate the Map Act. As stated above, the exclusive "easement is merely the right to use a portion of [plaintiffs'] property in a restricted manner." It "does not divide or sever the property into distinguishable possessory estates or interests." (*Ibid.*; *Robinson v. City of Alameda* (1987) 194 Cal.App.3d 1286, 1288 [written agreement permitting use of a portion of adjoining property did not violate Map Act].) We are not persuaded by plaintiffs' claim—made for the first time in their reply

---

Sandridge Partners, L.P. (2018) 22 Cal.App.5th 1020, 1035; *Gray, supra,* 167 Cal.App.4th at p. 1032.)

brief—that the exclusive easement "effects a reconfiguration" of the parcels, which contravenes the Map Act.

Nor is there any evidence, as plaintiffs claim, that the exclusive easement was "an intentional end-run around" the Map Act. (See *Blackmore*, *supra*, 150 Cal.App.4th at p. 1605 [easement did not present a scheme "designed to avoid the regulatory controls of the act"].) Ortiz testified she and Kehoe pursued an exclusive easement because it was the most economical and efficient solution, not because she intended to subvert the Map Act. She acknowledged the easement agreement did "not [convey] ownership."

We reject plaintiffs' reliance on opinions of the California Attorney General for the reasons discussed in *Blackmore*, *supra*, 150 Cal.App.4th at page 1605. Plaintiffs have not established the exclusive easement violates municipal zoning ordinances. (See *Tarbet v. East Bay Municipal Utility Dist.* (2015) 236 Cal.App.4th 348, 358.) Because we conclude the exclusive easement does not violate California law, we reject plaintiffs' reliance on maxims that contracts that do not have a "lawful object" are "void." (See Civ. Code, §§ 1550, 1596, 1598.) We have considered plaintiffs' remaining arguments; they merit no further discussion. (*Lyons v. Santa Barbara County Sheriff's Office* (2014) 231 Cal.App.4th 1499, 1506.)

DISPOSITION

The judgment is affirmed. Ortiz is entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

_____
Jones, P.J.

We concur:

_____
Simons, J.

_____
Needham, J.

A153324